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he performs the duties of the office, has no legal right to the emoluments thereof — are propositions so generally held by the courts as to make the citation of authorities in support of them almost superfluous. Nearly all, if not all, cases hereinbefore cited upon both views as to the liability of the city, hold that the *de facto* officer, for fees and emoluments of the office received by him, is liable at common law to the officer *de jure*. So far as we are aware, the only well-considered case taking a contrary view of the law is that of *Stuhr* v. *Curran*, 44 N. J. Law, 186, 43 Am. Rep. 353; and that was decided by a divided court, standing seven to five. We think the able dissenting opinion of Chief Justice Beasley in that case shows conclusively that at common law, in a case like the present, the *de jure* officer is entitled to recover from the *de facto* officer. Another well-considered case directly in point in favor of this view is that of *Kreitz* v. *Behrensmeyer*, 149 Ill. 496, 36 N. E. Rep. 983, 24 L. R. A. 59."

The decision of the court is undoubtedly in accordance with the weight of authority. (See MECHEM on PUBLIC OFFICERS, §332.) To the list of states holding that the municipality can not be compelled to pay to the *de jure* officer after payment in good faith to the *de facto* officer, may be added:— Arizona (*Shaw* v. *Pima County*, Ariz. , 18 Pac. Rep. 273), South Dakota, (*Fuller* v. *Roberts Co.*, 9 S. Dak. 216, 68 N. W. Rep. 308. See also, *Selby* v. *Portland*, 14 Oreg. 243. 58 Am. Rep. 307.

EXEMPLARY DAMAGES WHERE ACTUAL DAMAGES MERELY NOMINAL— The United States Circuit Court of Appeals, for the second circuit, in the case of *Press Pub. Co.* v. *Monroe*, 19 C. C. A. 429, 38 U. S. App. 410, 73 Fed. Rep. 196, 51 L. R. A. 353, has added the weight of its authority to the list of those which hold that exemplary damages may be awarded, in a proper case, even though the actual damages which can be shown are merely nominal. The opposite view, commonly attributed to the case of *Stacy* v. *Portland Pub. Co.*, 68 Me. 279, proceeds upon the theory that exemplary damages are awarded not only to compensate the individual but also for the protection of the public interests, and asserts that "if the individual has but a nominal interest, society can have none. . . If there was enough in the defense to mitigate the damages to the individual, so did it mitigate the damages to the public as well." The same view has been announced in *Kuhn* v. *Railway Co.* 74 Iowa, 137, 37 N. W. Rep. 116; *Maxwell* v. *Kennedy*, 50 Wis. 645, 7 N. W. Rep. 657; and *Schippel* v. *Norton*, 38 Kan. 567, 16. Pac. Rep. 804. These cases, however (and there are others to the same effect, *e. g.*: *Gilmore* v. *Mathews*, 67 Me. 517; *Freese* v. *Tripp*, 70 Ill. 496; *Meidel* v. *Anthis*, 71 Ill. 241; *Ganssly* v. *Perkins*, 30 Mich. 492), are said by the Court of Appeals, to be "plainly at variance with the theory upon which exemplary damages are awarded in the Federal courts, namely, as something additional to, and in no wise dependent upon, the actual pecuniary loss to the plaintiff, being frequently given in actions where the wrong done to the plaintiff is incapable of being measured by a money standard. *Day* v. *Woodworth*, 54 U. S. (13 How.) 370, 14 L. ed. 184. There is room for argument against the allowance of exemplary damages at all as anomalous and illogical. Some courts have held that it is

unfair to allow the plaintiff to recover, not only all the loss he has actually sustained, but also the fine which society imposes on the offender to protect its peculiar interests. But if it be once conceded that such damages may be assessed against the wrongdoer, and, when assessed, may be taken by the plaintiff—and such is the settled law of the Federal courts—there is neither sense nor reason in the proposition that such additional damages may be recovered by a plaintiff who is able to show that he has lost $10, and may not be recovered by some other plaintiff who has sustained, it may be, far greater injury, but is unable to prove that he is poorer in pocket by the wrongdoing of defendant." *Wilson* v. *Vaughn*, 23 Fed. Rep. 229, adopts the same theory, as does also the supreme court of Alabama, in *Railroad Co.* v. *Sellers*, 93 Ala. 9, 9 Southern Rep. 375. The cases cited as taking the opposite view may have been rightly decided upon their special facts—and doubtless most lawyers would agree to the conclusions in the majority of them—but if exemplary damages are to be awarded at all, the cases wherein an injury, not capable of pecuniary estimation, is committed under circumstances of gross insult, indignity, contumely or malice, seem to be the very ones in which their allowance is most wholesome and effective. It is, moreover, doubtful whether a careful analysis of the cases will not demonstrate that the supposed conflict is more verbal than substantial, and whether there has not been a failure to distinguish between no injury at all, or an injury merely nominal, and a real and substantial injury incapable of being expressed in terms of dollars and cents. In this connection a comparison of *Maxwell* v. *Kennedy*, 50 Wis. 645, *supra*, and the later case of *Hacker* v. *Heiney*, 111 Wis. 313, 319; or of *Hefley* v. *Baker*, 19 Kan. 9, and *Schippel* v. *Norton*, 38 Kans. 567, *supra*, will prove suggestive.

SEDUCTION — FICTION OF SERVICE—The doctrine that, to recover damages for the seduction of his daughter, a parent must offer some evidence of a loss of service, received a striking illustration in a case recently decided by the English Court of Appeal. The plaintiff's daughter, who was in the service of the defendant, was permitted to go out once a week for an afternoon and evening. On such occasions she went to her father's house and assisted in household duties. In an action by the plaintiff for the seduction of his daughter by the defendant while she was in the latter's service, *Held*, that there was no evidence of the relation of master and servant between the plaintiff and his daughter to support the action, *Whitbourne* v. *Williams*. [1901] 2 K. B. 722.

It was urged that as the action of seduction is founded on a fiction, there is no need to have any support for it in fact, but the Court of Appeal refused to yield to this argument, saying that for the fiction there must be some foundation, however slender, in fact.

On the other hand, in the recent case of *Anthony* v. *Norton*, (1899) 60 Kan. 341, 56 Pac. Rep. 529, 72 Am. St. Rep. 360, 44 L. R. A. 757, the supreme court of Kansas went to the other extreme. In the official headnote by Doster, Ch. J., who wrote the opinion, it is said: "The common-law rule in actions by a parent for damages for the seduction of his daughter, which required him to sue, in the capacity of a master, for the loss of her services as a servant,